

The Commission should eliminate the sharing and low-end adjustment mechanisms effective January 1, 1995. By doing so, the Commission will sever the remaining links to rate-of-return regulation and significantly increase the potential efficiency gains inherent in the price cap plan.

G. Baseline Issue 5: Common Line Formula

Baseline Issue 5a:

Whether the Commission should reconsider its use of the Balanced 50/50 formula to cap common line charges.

Baseline Issue 5b:

If so, what method should the Commission use to cap common line charges?

Baseline Issue 5c:

If the Commission were to adopt a per-line charge, how should this affect possible changes in the productivity factor or the composition of baskets, e.g., changes such as the inclusion of common line rates in a public policy basket?

Baseline Issue 5d:

What incentives are generated by the current Balanced 50/50 formula, the per line formula, or other possible formulas? What incentives should the formula seek to generate?

Response:

The current 50/50 common line formula is an unnecessary distortion in price cap regulation. Theoretically, this formula

"splits the benefits from growth (as well as the risks of a decline) in minutes per line for common line service between the LECs and the interexchange carriers."⁹⁶ In practice, interexchange carriers and other LEC access customers already benefit from common line growth and all other growth in LEC output through the price cap formula's productivity offset. Thus, the common line adjustment "double counts" growth that is already reflected in the productivity offset.⁹⁷ As such, there is no justification for the common line adjustment, and it should be eliminated.

In the event the Commission determines that a common line adjustment is necessary in the future, the existing formula should continue to be used.⁹⁸

H. Baseline Issue 6: Exogenous Cost Changes

Baseline Issue 6a:

Whether the number of cost changes currently eligible for exogenous treatment under price caps should be reduced.

⁹⁶NPRM ¶ 56.

⁹⁷This "double-counting" effect is exacerbated when LECs select a 4.3 percent productivity offset as U S WEST has done in recent years.

⁹⁸In evaluating the need for a common line adjustment and determining the appropriate productivity offset in the price cap formula, the Commission should not lose sight of the fact that the common line adjustment "double counts" productivity changes. The higher the productivity offset, the greater the "double counting" in the common line adjustment.

Baseline Issue 6b:

If so, which cost changes should be eligible for exogenous treatment under price caps.

Baseline Issue 6c:

Whether we should adopt an administrative process to allow access customers or other groups to request cost changes eligible for exogenous treatment and, if so, what should be the procedures in such an administrative process?

Response:⁹⁹

Exogenous cost changes should be eliminated from the LEC price cap plan. Exogenous cost adjustments are a deviation from pure price cap regulation and, while reasonable in theory, create problems in practice. After three years of experience with price cap regulation, three things are clear. First, there is no agreement between the Commission and LECs as to what cost items qualify for exogenous treatment. Second, there is no agreement as to how exogenous cost changes should be calculated once they have been identified. Third, exogenous cost changes are no longer tantamount to rate changes. Furthermore, experience has indicated that the Commission is not amenable to exogenous cost changes which have a measurable impact on increasing LEC Price Cap Indices.¹⁰⁰ Thus, symmetrical treatment of exogenous cost changes is unlikely.

⁹⁹See supra pp. 18-20 for additional comments on exogenous costs.

¹⁰⁰The Commission fashioned exogenous cost tests in the OPEB proceeding which are extremely costly and almost impossible to meet. See supra note 43.

Most of the initial exogenous cost adjustments under the price cap plan were essentially carry-overs from rate of return regulation and have either expired or will expire in the near future.¹⁰¹ No additional exogenous cost adjustments should be allowed after the expiration of existing adjustments. Clearly, if some event occurs which has a dramatic effect on the telephone industry whether it be legislation, a natural catastrophe of huge proportions or changes in the Commission's Rules which significantly impact LEC costs with no corresponding increase in revenues/funding, the price cap rules can be waived or modified, as needed, at that time.¹⁰² There is no need to continue to incorporate an exogenous cost adjustment in the LEC price cap mechanism -- it only detracts from the efficiency incentives of the price cap plan.

I. Baseline Issue 7: Service Quality, Infrastructure Monitoring, and Network Reliability

Baseline Issue 7a:

Whether the Commission should increase or revise the monitoring of the LECs' network reliability, service quality, and infrastructure development. Commenters are requested to submit data, information, and proposals in this inquiry that in their view will contribute to assuring state-of-the art reliability, service quality, and infrastructure development for the LECs. Commenters also are requested to submit data identifying the administrative and business costs associated with their proposals.

¹⁰¹See supra note 46.

¹⁰²For example, if the Commission substantially redefines its view of what constitutes "universal service" and requires LECs to satisfy this expanded definition with no new funding, modifications in the price cap plan would be required.

Baseline Issue 7b:

Whether and if so how the Commission should expand its service quality monitoring to include price cap LEC facilities and services that may be interconnected with the local exchange network or used to provide similar capabilities, including wireless services and coaxial cable. Commenters are requested to submit specific data on the administrative and business costs associated with their recommendations on the reporting requirements. (Emphasis added.)

Response:

In adopting price cap regulation, the Commission required price cap LECs to submit quarterly quality of service reports and annual infrastructure reports. The Commission's goals in adopting these reporting requirements were to ensure that price cap regulation would not result in a degradation of service quality and to evaluate the impact of price cap regulation on service quality and network modernization.¹⁰³ As the Commission noted in the NPRM, price cap regulation has not led to a decline in service quality nor a reduction in network modernization.¹⁰⁴ The NPRM also cites significant improvements in the development of the LEC infrastructure under prices caps, "including deployment of technologically superior hardware and software."¹⁰⁵

U S WEST has supported the Commission's goals in adopting quality of service requirements for price cap LECs. U S WEST

¹⁰³The Commission delegated to the Common Carrier Bureau the responsibility for developing reporting requirements to monitor LEC service quality and infrastructure development.

¹⁰⁴NPRM ¶¶ 27-30.

¹⁰⁵Id. ¶ 29.

recognizes that it must continuously strive to improve its quality of service if it is going to be successful in an increasingly competitive market for access services. To accomplish this, U S WEST surveys its customers as to their expectations for service quality and what aspects of service are most important to them.¹⁰⁶ Internal measurements have been implemented to track U S WEST's results in meeting these expectations for different customer groups. U S WEST continues to make changes in its provisioning and maintenance methods to meet customer expectations. For instance, most residential customers who need repair service have the opportunity to choose the repair time (i.e., time of a technician's visit) that is most convenient for them, rather than having U S WEST determine the time. This is one example of a change that has been driven by customer expectations, rather than by the price cap service quality reporting.¹⁰⁷

The fact that service quality has not suffered under price cap is not due to the existence of FCC tracking reports, but to market pressures and LEC commitments to service quality. The Commission's reports have measured what has happened -- they are not the cause of it. Having put an end to fears of a quality

¹⁰⁶These expectations are then translated into internal measurements. For example, research has shown that residence customer expectations of U S WEST include: 1) be accessible; 2) meet installation and repair commitments; 3) provide excellent quality; 4) keep the customer informed; 5) confirm the work is completed; 6) interact professionally; and 7) provide convenient service.

¹⁰⁷U S WEST is also establishing processes to allow it to identify potential network problems and fix them before customer service is affected.

decline under price cap regulation, the Commission should seriously consider eliminating tracking reports in their current form. These reports assume a uniformity among LECs which does not exist in practice and focus on internal operating characteristics rather than on customer expectations and customer satisfaction. However, if the Commission finds quality of service and infrastructure reporting requirements to be in the public interest, such reporting requirements should not be limited to price cap LECs. Rarely do LECs provide end-to-end service; they are just one network in a "network of networks." Thus, if the Commission determines that it is necessary to measure overall quality of service and infrastructure investment, reporting requirements must be extended to encompass a wide variety of telecommunications providers, including other LECs, IXC's and CAPs.¹⁰⁸ Regardless of the existence of reporting requirements, one thing is clear -- quality of service is an important factor in determining which carrier a customer selects to provide its telecommunications services.

J. Baseline Issue 8: Rate and Regulations for New Services

Baseline Issue 8a:

Whether the LEC price cap new services requirements impose unnecessary regulatory impediments to the development and introduction of new services which specific identification of what those impediments are and an assessment of their magnitude.

¹⁰⁸Also, the Commission should strive for standardization of reporting requirements between the state and interstate jurisdictions, if that is at all possible.

Baseline Issue 8b:

Whether, and how, we should modify the LEC price cap new services procedures and cost support rules to ensure that these rules advance our goals of encouraging innovation and setting reasonable rates.

Baseline Issue 8c:

Whether new services are available on an equal basis to all LEC customers. Whether we should revise the LEC price cap plan to ensure the universal availability of new services. How widely available have LECs made new services to their customers?

Response:

As stated earlier in these Comments, U S WEST believes that the adoption of streamlined rules for the introduction of new services should be a primary goal of price cap reform. The current rules frustrate the introduction of new services in several very important ways:

- by requiring Part 69 waivers or rule changes for new switched access services;
- by requiring detailed cost showings;
- by providing no assurance that the terms and conditions and, even, the configuration of a new service, when ultimately approved, will resemble a carrier's initial proposal;
- by requiring a lengthy staff review both before and after formal tariff filing;
- by requiring Part 61 waivers to reference technical publications;
- by delaying the introduction of new services as a result of the need to satisfy a plethora of regulatory requirements (e.g., Part 61, Part 69, etc.);

- by increasing the cost of introducing new services; and
- by making product introduction much more difficult and, thereby, reducing new product offerings and trials.

Existing new service requirements are no longer appropriate in an increasingly competitive local exchange market. These rules/ procedures serve to frustrate customers by delaying or denying altogether the benefits of new services and pricing options. The full benefits of competition are undermined by the inability of LECs to respond to competitive offerings in a timely manner. Also, competitors regularly use these procedures in an attempt to gain an unearned competitive advantage (i.e., by seeking to delay new service offerings or to increase new service prices).¹⁰⁹

U S WEST believes the Commission should streamline the introduction of new services by reforming its Part 61 and Part 69 Rules in the following manner:

¹⁰⁹The Commission's current rules place a heavy burden of proof on a LEC by requiring a waiver of the Commission's Rules to introduce a new switched access service. This heavy burden is inconsistent with the Communications Act's presumption in favor of new services, which states:

It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

47 USC § 157(a).

- Eliminate the Codification of Rate Elements in Part 69

The Part 69 Rules define in detail the rate elements for broad categories of services, such as local switching, information and local transport. Rate sub-elements are also specified for optional services associated with rate elements, such as the per-query charge for 800 database service. With the exception of sub-elements for special access services, no element or sub-element can be introduced by a LEC without a rule change or waiver.

The chilling effect that this rigid rate structure has on the introduction of new services has been recognized by the Common Carrier Bureau Staff:

[N]ew technologies challenge the static nature of the Part 69 Rules and highlight the need for reform to accommodate and encourage innovation.¹¹⁰

U S WEST supports the USTA Proposal to generally eliminate the rate structure codification of Part 69. The one exception to this general rule is public policy rate elements which support a wide range of public interest objectives.¹¹¹

¹¹⁰"Federal Perspectives in Access Charge Reform: A Staff Analysis," Access Reform Task Force, Apr. 30, 1993, at 20.

¹¹¹Codified public policy elements would include Lifeline Assistance, Universal Service Fund, End-User Common Line Charge, Carrier Common Line Charge, Long-Term Support, Interconnection Charge, Telecommunications Relay Service, Special Access Surcharge and other elements that may be established by the Commission to support public policy objectives. U S WEST believes, however, that LECs should be afforded greater flexibility with respect to the recovery of carrier common line revenue through alternative rate structures.

- Permit LECs to Reference New or Revised Technical Publications without Waivers of Part 61.74

LECs generally do not provide all of the technical details associated with their interstate services in their tariffs. Instead, these tariffs typically reference technical publications, which contain a wide range of very detailed technical information such as plugs, voltages and protocols. However, the Commission's Rules prohibit the referencing of technical publications in a tariff.¹¹² This requirement is an anachronism.

LECs who propose to file a new service tariff which references a technical publication must first submit a waiver of the above rule, and the waiver must be granted, before the LEC can file the tariff. This waiver process adds unnecessary costs, and potential delays to the introduction of new services. U S WEST proposes that the Commission modify its rules to permit LECs to reference technical publications in their interstate tariffs.

- Reduced Notice Periods

Under the current rules, LEC tariffs which introduce new services or alter the rate structure for an existing service must be filed on 45 days' notice.¹¹³ In contrast, nondominant

¹¹²"Except as otherwise provided in this and other sections of this part, no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument." 47 CFR § 61.74(a).

¹¹³47 CFR § 61.58(c)(5).

carriers may introduce new service tariffs on one days notice.¹¹⁴ USTA proposes to maintain a 45-day notice period for new service tariffs offered in an initial market area ("IMA"), but to reduce the notice period to 21 days for new services offered in a transitional market area ("TMA") and to 14 days for new services offered in a competitive market area ("CMA").

U S WEST believes the USTA Proposal is too modest. The Commission defines "new services" as "services which add to the range of options already available to customers. . . . As long as the pre-existing service is still offered, and the range of alternatives available to consumers is increased, we will classify the service as new."¹¹⁵ As a result of this definition, no new service tariff can alter a service currently enjoyed by a customer. Thus, LECs are well aware that any new service tariff introduced with unreasonable terms or conditions, or with a high price relative to the service functionality, can and will be ignored by the market. U S WEST therefore believes new services should be filed on a 14-day notice period in all market areas.

- Contract-Based Pricing in TMA and CMAs

U S WEST supports the USTA Proposal to permit LECs to offer contract-based tariffs for new services. Under the USTA Proposal, LECs could file a contract-based tariff for a service in a TMA if

¹¹⁴In the Matter of Tariff Filing Requirements for Nondominant Common Carriers, Memorandum Opinion and Order, 8 FCC Rcd. 6752 ¶ 3 (1993).

¹¹⁵Price Cap Order, 5 FCC Rcd. at 6824 ¶ 314.

the service is in response to a customer-initiated request for proposal. Contract-based services would be permitted for any service offered in a CMA. The demand and price associated with TMA and CMA services would be removed from price caps -- providing assurances that LECs could not subsidize such services from revenues derived from services subject to price caps.

- Streamline the Section 214 Application Process

One of the greatest impediments to LEC participation in the delivery of new video entertainment services to the home has been the Section 214 Application process. In its Video Dialtone Order, the Commission indicated that it would use the Section 214 process to evaluate LEC video dialtone proposals. The Section 214 process was designed to prevent useless duplication of facilities in a monopoly environment. It was never intended to regulate competitive entry into a new service category such as video dialtone. The last two years of regulatory battles since the adoption of the Video Dialtone Order demonstrate that the Section 214 process is an obstacle to introducing new video services rather than an aid. If the Commission continues to employ the Section 214 process for evaluating video dialtone proposals, it must be streamlined. "Me too" applications which mirror previously approved Section 214 Applications should be presumed to be lawful and authorized by a certain date -- U S WEST suggests 45 days after submittal. The Commission should also adopt a specific timeframe for acting on new Section 214 Applications. U S WEST suggests that this period be no more than four months after the date of filing. Also, the Commission

should revise or eliminate many of the sections of its Part 63 Rules which are either inapplicable to or inappropriate for evaluating video dialtone proposals.

- Pricing Flexibility

LEC new service tariffs have been subject to a complex array of requirements, including detailed cost showings, overhead allocation tests, risk premiums, technology-based cost models, and ARMIS data comparisons. Once a new service tariff becomes effective, the new service is not immediately placed within the price cap structure. Instead, the new service remains outside of price caps until the next annual filing is effective. During this interim period -- which can last up to 18 months -- a LEC cannot change the price of a new service without resubmitting another detailed cost showing. Moreover, once the new service is placed within the price cap mechanism, it may be further limited by the creation of a new service band index.

Current procedures substantially limit the incentives for LECs to introduce new interstate services. At most, LECs should be required to show that the proposed service price exceeds its incremental cost. And, for new services offered in an IMA or TMA, the new service should be integrated within the price cap mechanism upon approval of the tariff, permitting a LEC greater flexibility to adjust prices to meet customer needs. Finally, so long as the LEC maintains the price of the service above the incremental cost floor established in the initial tariff filing, there should be no need for the Commission to establish individual service band indices for each new service.

• Eliminate New Service Tracking Reports

LECs are currently required to file quarterly reports with the Commission on new service offerings. The Commission has already proposed to reduce the burden of such reporting by requiring only annual reporting. U S WEST believes such reports are inconsistent with the increasingly competitive market, and should be eliminated in their entirety.¹¹⁶

K. Baseline Issue 9: Equalization of Regulations for LECs and CAPs

Baseline Issue 9a:

Whether our current rules for computing AT&T's exogenous access costs should be revised to equalize the treatment of LEC and CAP access rates in the calculation of AT&T's exogenous access costs.

Response:

U S WEST supports a revision in the AT&T price cap plan to equalize the treatment of LEC and CAP access rates in the calculation of AT&T's exogenous access costs.¹¹⁷ Under the

¹¹⁶Virtually all of the information LECs are required to file in their new service reports is also filed in LEC Annual Filings when new services come under price cap regulation.

¹¹⁷While this issue really concerns itself with the AT&T price cap plan rather than the LEC price cap plan, it is timely. In deferring resolution of this issue in the AT&T price cap review, the Commission acknowledged that its "current method of calculating AT&T's exogenous access costs may create an actual bias" and that implementation of expanded interconnection for switched access would exacerbate this bias In the Matter of Price Cap Performance Review for AT&T, 8 FCC Rcd. 5165, 5169 ¶ 33 (1993). U S WEST is indifferent as to whether the Commission removes this bias in this proceeding, the expanded inter-
(continued...)

current AT&T price cap mechanism, changes in LEC access charges are treated as exogenous cost changes. Thus, an increase or decrease in LEC access charges will flow through to AT&T's PCI.¹¹⁸ Conversely, AT&T cost changes associated with increases or decreases in CAP charges are not given exogenous treatment and are not reflected in AT&T's PCI.¹¹⁹ The net result under current rules is that AT&T's PCI will: 1) decrease if AT&T purchases LEC access services and LEC access charges are decreasing; 2) increase if AT&T purchases LEC access services and LEC access charges are increasing; and 3) remain unchanged if AT&T purchases CAP access and CAP access charges increase or decrease. All other things being equal, AT&T will have a bias towards purchasing LEC access services when LEC prices are rising and a bias towards purchasing CAP access services when LEC prices are falling. This defect in the AT&T price cap mechanism was pointed out by a number of commentators, including U S WEST, in the price cap proceeding¹²⁰ and in the AT&T price cap review.¹²¹

¹¹⁷(...continued)
connection proceeding, or through a modification of the rules governing the AT&T price cap plan. U S WEST's only concern is that the Commission take action at the earliest possible date to correct this defect in the AT&T price cap plan.

¹¹⁸AT&T Price Cap Order, 4 FCC Rcd. at 3005 ¶ 260.

¹¹⁹In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd. 665, 673-74 ¶¶ 68-73 (1991).

¹²⁰See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Reply Comments of the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company, filed Sep. 9, 1988, at 28-37; Comments of Bell Atlantic Telephone Companies, filed July 26, 1988, at 11-13.

The Commission rejected LEC proposals that CAP charges be treated as exogenous costs on a number of grounds;¹²² but, in essence, the Commission was not persuaded by LEC arguments. Clearly, the Commission did not view CAPS as a significant competitive threat to LECs. Circumstances have changed significantly since the original AT&T price cap plan was adopted. CAPs have increased both in number and in size. They are no longer an after-thought in access discussions but are significant access competitors in most major metropolitan areas. Also, the Commission has taken explicit steps to introduce even greater competition in the interstate access market.¹²³ The Commission's actions in its expanded interconnection and local transport proceedings make it clear that the market for interstate access will become even more competitive in the

¹²¹(...continued)

¹²¹See In the Matter of Price Cap Performance Review for AT&T, CC Docket No. 92-134, Comments of U S WEST Communications, Inc., filed Sep. 4, 1992.

¹²²The Commission noted that CAPs did not file access tariffs with the Commission and it would be difficult to monitor exogenous treatment of these cost changes. Also, the Commission stated that CAP access costs did not qualify for exogenous treatment since they are beyond the control of the Commission. AT&T Price Cap Order, 4 FCC Rcd. at 3029 ¶ 320. This is no longer true since CAPs are required to file tariffs, as is any other common carrier. In the Matter of Tariff Filing Requirements for Nondominant Common Carriers, Notice of Proposed Rulemaking, 8 FCC Rcd. 1395 ¶ 1 (1993).

¹²³See, e.g., In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd. 3259, 3260-61 ¶¶ 11-16 (1991); Transport Rate Structure FNPRM, 6 FCC Rcd. 5344-46 ¶¶ 14-20; In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order and Notice of Proposed Rulemaking, 8 FCC Rcd. 7374, 7376 ¶ 1 (1993).

future.¹²⁴ As such, it is imperative that the aforementioned bias be removed from the AT&T price cap mechanism.¹²⁵ Not only is it unfair to LECs in times of decreasing access charges, but it is at odds with the Commission's primary goal in adopting price cap regulation -- to eliminate distortions in carrier incentives which were inherent in rate of return regulation.

Baseline Issue 9b:

Whether any other rules or policies that relate to LEC price cap regulation should be revised to equalize

¹²⁴One of the Commission's primary objectives in promulgating new local transport rules was to "avoid adopting transport pricing requirements that would interfere with the development of interstate access competition." Transport Rate Structure FNPRM, 6 FCC Rcd. at 5343 ¶ 11.

¹²⁵The fact that this bias plays a part in purchasing decisions is demonstrated by an excerpt from Southwestern Bell's filing in the expanded interconnection proceeding, CC Docket No. 91-141:

CAPS have expressly touted to IXCs that a major benefit of IXCs switching from LEC services to lower-priced CAP services is that any savings need not be passed along to consumers. A MFS senior vice president, in his deposition in Texas PUC Docket No. 9796, confirmed that at his September 11, 1990 speech to the ACTA Conference in which he told the audience:

The interexchange carrier generally pays less for both installation and recurring charges for competitive (CAP) access service. And unlike reductions in switched carrier common line charges made by the BOCs, these savings need not be flowed-through to the end user. The long distance carrier may keep the savings for itself to improve its own bottom line.

In the Matter of Expanded Interconnection With Local Telephone Facilities, CC Docket No. 91-141, RM 7249, ENF-87-14, Southwestern Bell Comments, filed Aug. 6, 1991, at Appendix B, at 9-10 (citing Mar. 25, 1991, Deposition of Robert Douglas Bradbury, at 66-67). (Emphasis added.)

our treatment of LECs and CAPs, and if so, what the revised rules and policies should be.

Response:

U S WEST favors equal treatment of LECs and CAPs. U S WEST also recognizes that it will not happen tomorrow. But the Commission can take a significant step in that direction in this proceeding. U S WEST has no interest in burdening CAPs with the pervasive regulation that it faces -- some of which, ironically, has been adopted to further competition. The answer is not to impose more regulation on CAPs to equalize the regulatory burden or to impose more regulation on LECs to protect CAPs. The current level of regulation already imposes a significant burden on LECs and their customers. Having said this, neither U S WEST nor any other LEC has any interest in literally giving their existing customers to CAPs as a result of overly restrictive regulation.

The Commission can and should take steps in this proceeding to remove competitive services from price cap regulation and to streamline the introduction of LECs' new service offerings. Throughout these Comments U S WEST references USTA's Proposal. This proposal provides the Commission with an excellent framework for moving toward the equalization of the treatment of CAPs and LECs by removing competitive services from price cap and other regulation. This proposal gives LECs the freedom that they need

to compete in CMAs while continuing to impose regulation in those areas with little or no competition.¹²⁶

There is one important area where the Commission must impose an additional requirement on the CAPs -- the collection of information that will quantify the level of competition in local exchange markets. In this proceeding, U S WEST urges the Commission to establish rules that will align the degree of regulation in each local market with the extent of competitive alternatives in each market. An essential prerequisite for such a system is a reliable method for evaluating the extent of competitive alternatives in each local exchange market.

Unfortunately, the Commission does not currently have sufficient information to make a reliable evaluation of the competitive alternatives in a particular local exchange market. The Commission cannot rely exclusively on information that is reported by LECs to make such an evaluation, since LECs do not have information about their competitors' ability to provide specific services in particular service areas. And, since non-dominant carriers currently are required to provide only a minimum of information with their interstate tariffs pursuant to the Order in CC Docket No. 93-36, the Commission cannot rely on information currently provided by CAPs

U S WEST supports the USTA proposal that the Commission require CAPs and other nondominant carriers to provide a minimal

¹²⁶The Commission should not delude itself into believing that competition can be "managed." It cannot. The public interest will not be served by sending false signals to the market and creating a protected class of market participants. This will only create greater problems in the future, as the current paralysis in the local transport proceeding demonstrates.

amount of additional information with their interstate tariffs to permit the Commission to adequately assess the level of competition in local exchange markets. Such information would include the services offered by the CAP, and the geographic areas in which such services are generally available. Such information is currently provided by LECs in their NECA 4 tariffs.¹²⁷

The reporting of service area descriptions by CAPs would permit the Commission to efficiently assess the presence of competitive alternatives in each geographic area and determine whether competitive forces in that area are sufficient to warrant relaxed regulation of the LEC's services.

L. Baseline Issue 10: Sales and Swaps of Exchanges

Whether and how, the process for granting waivers of the price cap rules governing mergers and acquisitions or the price cap rules themselves should be revised so as to prevent unreasonable cost shifting and maintain the efficiency incentives of the LEC price cap plan.

Response:

Sales and purchases of exchanges by price cap LECs are no different than selling, retiring, depreciating or purchasing any other asset. The Commission's concerns with respect to such sales center around the issue of whether exogenous cost treatment is appropriate. If the Commission adopts U S WEST's proposal to

¹²⁷In the event a CAP does not provide service area descriptions in its tariff, the Commission should require CAPs to provide an annual filing describing their facilities currently in place, and the facilities planned for construction in the following year.

eliminate exogenous cost adjustments from the LEC price cap plan, this issue will disappear.

M. Baseline Issue 11: Other Revisions to the Current LEC Price Cap Plan:

Whether the Commission should adopt revisions to the baseline LEC price cap plan in areas other than those specifically discussed in this Notice.

Response:

See Section III(T) below.

N. Baseline Issue 12: Relationship to Other Proceedings:

How the Commission should coordinate the LEC price cap review and any changes in the LEC price cap plan with other proceedings and proposals.

Response:

The Commission seeks comment on how to "best harmonize the review of LEC price caps with other proceedings and proposals".¹²⁸ As an initial matter, U S WEST repeats a theme stated throughout these comments -- the Commission should incorporate the USTA Access Reform Proposal within its Price Cap Review. The level of competition that currently exists within certain local exchange markets today, and the certainty of even greater competition before the next price cap review, does not allow the Commission the luxury of deferring serious reform of the access rules to a separate proceeding -- at least not if the

¹²⁸NPRM ¶ 91.

Commission wants a price cap plan which will accommodate competition.¹²⁹

LECs have several pending requests for waivers of the Commission's Rules.¹³⁰ These requests reflect the increasing need for LECs to develop pricing plans that are more responsive to customers in an increasingly competitive market. The plans also are a reflection of the rigidity of the existing rules -- rules that were developed in 1983, when competition in the local exchange markets was in its infancy. If the Commission does not reform its access rules, it can expect to be overwhelmed by many more such requests as LECs attempt to respond to competitors' service offerings and prices. While U S WEST believes the Commission should deal expeditiously with pending waiver requests, it should not use the waiver process as a substitute for making changes in its access charge rules which are required to accommodate competition. U S WEST believe the USTA Access Reform Proposal provides a solid framework for such reform.

In addition to access reform, numerous other proceedings are affected by or overlap with this price cap review. If the Commission eliminates the last vestiges of rate of return regulation by eliminating the sharing and low-end adjustment

¹²⁹As stated above, the revised rules should be sufficiently flexible to permit market forces to control LEC prices and services in competitive markets -- such as urban wire centers where competitors are already present, and expanding rapidly.

¹³⁰Ameritech Corporation Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481, filed Mar. 1, 1993; Petition for Waiver of the GTE Telephone Operating Companies, DA 93-977, filed Aug 3, 1993; Nynex Telephone Companies Petition for Waiver DA 93-1537, filed Dec. 15, 1993; Rochester Telephone Corporation Petition for Waiver, DA 93-687, filed May 19, 1993; etc.

mechanisms, it should take action in the following proceedings to ensure harmony:

- Depreciation Simplification¹³¹

In this proceeding the Commission declined to allow LECS to use more realistic service lives due to the existence of the sharing mechanism in the price cap plan. If the Commission eliminates the sharing and low-end adjustment mechanisms, it should act on outstanding petitions for reconsideration and allow price cap LECs to use the "price cap option" to establish depreciation rates and service lives.

- Affiliate Transactions¹³²

In this proceeding the Commission is considering modifying its existing rules to address cross-subsidization concerns arising from affiliate transactions. Elimination of the sharing and low-end adjustment mechanisms would obviate the need for any additional affiliate transaction rules by eliminating the possibility of cross-subsidization. Thus, the Commission could terminate this proceeding.

- Add-Back¹³³

In this proceeding the Commission is examining how sharing and low-end adjustments are treated in calculating LEC earnings levels (i.e., rate of return) under price cap regulation. With the elimination of the sharing and low-end adjustments, this issue becomes moot and the Commission could terminate the add-back proceeding.

- Judgments and Litigation Costs¹³⁴

In this proceeding the Commission is considering whether judgments and litigation costs should be

¹³¹Depreciation Simplification NPRM, 8 FCC Rcd. 146 (1992).

¹³²Affiliate Transaction NPRM, 8 FCC Rcd. 8071 (1993).

¹³³In the Matter of Price Cap Regulation of Local Exchange Carriers, Rate of Return Sharing And Lower Formula Adjustment, Notice of Proposed Rulemaking, 8 FCC Rcd. 4415 (1993).

¹³⁴In the Matter of Accounting for Judgments and Other Costs Associated with Litigation, Notice of Proposed Rulemaking and Order, 8 FCC Rcd. 6655 (1993).

reflected in earnings offsets for price cap companies or, alternatively, whether these costs should be borne by shareholders through "below the line" adjustments. With the elimination of sharing and the low-end adjustment factors, this proceeding can be terminated since neither LEC earnings nor prices would be affected by the outcome of the proceeding under price cap regulation.

Other proceedings which overlap with the price cap review are:

- New Service Reports¹³⁵

In this proceeding the Commission proposed that the frequency of new service reports be reduced from quarterly to annual for price cap carriers. This issue becomes moot if the Commission eliminates new service reporting requirements as U S WEST recommends in this proceeding.¹³⁶

- Operator Services Category¹³⁷

In this proceeding the Commission tentatively concluded that the creation of a separate category for operator services was necessary in order to limit LEC pricing flexibility. Operator services is a competitive service. If the Commission adopts USTA and U S WEST's proposals on the treatment of competitive services, this proceeding can be terminated.

- Universal Service

There is no overlap between universal issues raised in this price cap review and another proceeding. A separate proceeding has not yet been established to address universal service issues -- but one should be established. Given the complexity of universal service issues,¹³⁸ it would be virtually impossible to resolve

¹³⁵In the Matter of New Service Reporting Requirements Under Price Cap Regulation, Notice of Proposed Rulemaking, 8 FCC Rcd. 438 (1993).

¹³⁶See supra Response to Issue 8.

¹³⁷In the Matter of Treatment of Operator Services Under Price Cap Regulation, Notice of Proposed Rulemaking, 8 FCC Rcd. 3655 (1993).

¹³⁸There is a great diversity of opinions on just what should constitute "universal service" and how it should be funded.

(continued...)